

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

KEVIN MOODY and VERONICA MOODY,)
individually and as parents and next friend of)
TYLER MOODY, deceased,)

Plaintiffs,)

v.)

Case No. 03-CV-0784-CVE-PJC

FORD MOTOR COMPANY,)
a Delaware Corporation,)

Defendant.)


OPINION AND ORDER

Now before the Court is Plaintiffs' Motion for Reconsideration of the Court's Opinion and Order [Dkt. 246-1] (Dkt. # 247). Plaintiffs ask the Court to reconsider its Opinion and Order permitting defendant to use video and documentary evidence of the Malibu I and Malibu II studies to support the testimony of defendant's expert witness, Kenneth Orlowski. Based on Harvey v. General Motors Corp., 873 F.2d 1343 (10th Cir. 1989), the Court found that the videos were admissible as demonstrations of the scientific principles involved in rollover accidents, but the jury would be instructed not to treat the videos as recreations of the accident. Plaintiffs cite Muth v. Ford Motor Company, 461 F.3d 557 (5th Cir. 2006), in support of their claim that the Malibu I and II videos and documentary evidence should be excluded for any purpose. However, in Muth, the Fifth Circuit held that the Malibu I and II evidence should have been excluded because the "demonstration too closely resembles the disputed accident to effectively present abstract principles without misleading the jury." Id. at 567. In this case, there is little risk of the jury confusing a demonstration of a simulated rollover involving a 1983 Chevrolet Malibu and a two-door 1995 Ford

Explorer Sport, and the Court will instruct the jury not to consider the Malibu I and II evidence as a reenactment. Given that there is Tenth Circuit precedent directly on point and plaintiffs have not distinguished that precedent, plaintiffs' motion to reconsider should be denied.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Reconsideration of the Court's Opinion and Order [Dkt. 246-1] (Dkt. # 247) is **denied**.

DATED this 17th day of November, 2006.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT